

REMARKS

Claims 17-29 and 31-37 are currently pending in the application. By this amendment, claims 17, 18, 34, and 37 are amended for the Examiner's consideration. Also, claim 30 is canceled without prejudice or disclaimer. The above amendments do not add new matter to the application and are fully supported by the original disclosure. For example, support for the amendments is provided in the claims as originally filed, at Figure 1, and at pages 3-5 of the specification. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Allowed Claims

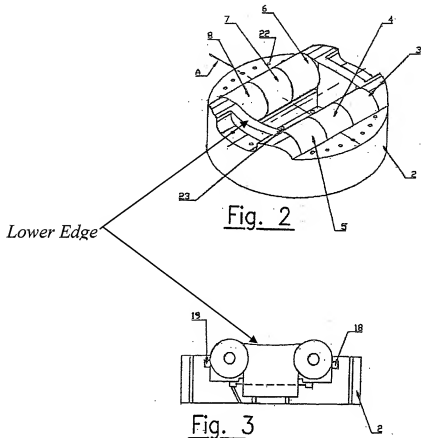
Applicants appreciate the indication that claims 30, 34, and 35 contain allowable subject matter. By this amendment, claim 34 is presented in independent form by amending claim 34 to include the features of claim 18. Therefore, claim 34, and claim 35 which depends from claim 34, should be allowed. Moreover, claim 30 is presented in independent form by amending claim 18 to incorporate the features of claim 30 and canceling claim 30. Therefore, claim 18, and claims 19-29, 31-33, and 36 which depend from claim 18, should be allowed. Additionally, Applicants submit that claims 17 and 37 are in condition for allowance for the following reasons.

Objection to Drawings

The drawings are objected to under 37 C.F.R. 1.84 for: the lines, numbers, and letters being not uniformly thick and well defined; and the numbers and reference characters not being plain and legible for all figures. Moreover, the drawings were objected to under 37 C.F.R. 1.83(a) for failing to show the features recited in claim 23. These objections are respectfully traversed.

Submitted with this amendment are Replacement Drawings for Figures 1-3. Applicants submit that the lines, numbers, and reference characters are sufficient for examination in that they are well defined, plain, and legible for all figures. Therefore, the drawings are in compliance with the provisions of 37 C.F.R. 1.84.

Applicants respectfully disagree with the Examiner's assertion that the drawings fail to show "suction chamber comprises a lower edge forming a fixed inlet/outlet" as recited in claim 23. The lower edge of the suction chamber is clearly shown at least in Figures 2 and 3, reproduced below with annotations.



As demonstrated by Figures 2 and 3, above, the drawings clearly show the lower edge of the suction chamber, as recited in claim 23. In exemplary embodiments of the invention, fluids

are able to travel into and/or out of the section head across this lower edge. Thus, in some aspects of the invention, the lower edge forms a fixed inlet/outlet, as recited in claim 23. Therefore, as the drawings show all of the features claimed, Applicants submit the drawings comply with 37 C.F.R. 1.83(a).

Accordingly, Applicants respectfully request that the objections to the drawings be withdrawn.

35 U.S.C. §112, first paragraph, Rejection

Claims 25 and 33 are rejected under 35 U.S.C. §112, 1st paragraph, for failing to comply with the written description requirement. More specifically, the Examiner contends that the original disclosure does not support the following recitations: “one spray outlet” in claim 25; and “said upper body includes at least one outlet, such that said suction chamber is in fluid communication with said outlet of said upper body” in claim 33. These rejections are respectfully traversed.

Applicants respectfully disagree with the Examiner’s assertions, and note MPEP §§2163 *et seq.* provides the following guidance regarding the written description requirement of 35 U.S.C. §112, first paragraph:

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. See, e.g., *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc.*

...

The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. See, e.g., *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117.

...

If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating “**the description need not be in *ipsis verbis* [i.e., “in the same words”] to be sufficient**”).

[emphasis added].

...

The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.

[emphasis added].

Applicants respectfully submit that claims 25 and 33 have adequate written description because the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants were in possession of the inventions recited in these claims. More specifically, at least one spray outlet (as recited in claim 25) described with respect to elements 22 and 23 in paragraph 0018 of the specification, and recited in original claims 5 and 8. Moreover, an outlet of the upper body (as recited in claim 33) is described with respect to element 10 in paragraphs 0015 and 0018 of the specification, and recited in original claim 1. Thus, although the specification does not use the exact phrases “one spray outlet” and “at least one outlet,” Applicants submit that, when taken as a whole, the original disclosure conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants were in possession of the inventions as now recited in claims 25 and 33.

Accordingly, Applicants respectfully request that the §112, first paragraph, rejection of claims 25 and 33 be withdrawn.

35 U.S.C. §112, second paragraph, Rejection

Claims 23, 26, and 37 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite. These rejections are respectfully traversed.

Claim 23

The Examiner asserts claim 23 is indefinite because the recitation “a lower edge forming a fixed inlet/outlet” is unclear. Applicants respectfully disagree.

According to MPEP §2173.02, the test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) the content of the particular application disclosure; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Claim 23 recites the suction chamber comprises a lower edge forming a fixed inlet/outlet, wherein the lower edge is made from a sliding material structured for the head to move on skin of a human body. Applicants submit that this subject matter is sufficiently described in the specification such that a person skilled in the art would understand what the claimed invention is when the claims are read in light of the specification and the teachings of the prior art. More specifically, an exemplary embodiment is described at least at paragraph 0018, where “a fixed inlet-outlet forming the lower edge of the suction chamber ... made of a sliding material (teflon).” As discussed above, in embodiments of the invention, fluids are able to travel into and/or out of the section head across this lower edge. Thus, in some aspects of the invention, the lower edge forms a fixed inlet/outlet, as recited in claim 23.

Thus, Applicants submit one ordinarily skilled in the art reviewing the original disclosure and pending claims would understand the instant invention and readily ascertain the scope of the invention. Therefore, Applicants submit the instant rejection of claim 23 is improper.

Claim 26

The Examiner first asserts claim 26 is indefinite because the recitation “one elastic joint providing suction integrity for said suction chamber” is unclear. Applicants respectfully disagree, and submit that claim 26 does not recite this language. Therefore, the rejection is improper and should be withdrawn.

The Examiner further contends that claim 26 is indefinite due to the recitation “whereby regulating variations of said pressurized fluid flow pressures due to leakages from said vacuum massage device, said massage head movements, and said pressurized fluid sucked into said suction chamber.” Even further, the Examiner contends that the recitation “said massage head movements” lacks antecedent basis and is unclear.

Applicants respectfully disagree and submit that this subject matter is sufficiently described in the specification such that a person skilled in the art would understand what the claimed invention is when the claims are read in light of the specification and the teachings of the prior art. More specifically, leakages and flow/pressure variation due to leakages are described in at least paragraphs 0008, 0020, and 0024.

Regarding the recitation “said massage head movements,” Applicants note that lack of antecedent basis does not *per se* render a claim indefinite (see, e.g., MPEP 2173.05(e)). Rather, as discussed above, the test for definiteness is whether those skilled in the art would understand what is claimed when the claim is read in light of the specification. Moreover, if the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not

indefinite. *Energizer Holdings Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 77 USPQ2d 1625 (Fed. Cir. 2006). Claim 26 depends from claim 24, in which “movement of said massage head on the skin” is recited. Based upon the language of claim 24 and the associated description in the specification, Applicants submit that the recitation of “said massage head movements” in claim 26 is sufficiently clear and definite when read in light of the specification.

Thus, Applicants submit one ordinarily skilled in the art reviewing the original disclosure and pending claims would understand the instant invention and readily ascertain the scope of the invention. Therefore, Applicants submit the instant rejection of claim 26 is improper.

Claim 37

The Examiner asserts claim 37 is indefinite because it is unclear whether the claim is directed to a device or a method. While Applicants do not agree with the holding of indefiniteness, nevertheless, for the purpose of advancing prosecution, Applicants have amended claim 37 to clarify that the claimed invention is directed to a process comprising massaging a body using a massage device.

Accordingly, Applicants respectfully request that the §112, 2nd Paragraph, rejection of claims 23, 26, and 37 be withdrawn.

35 U.S.C. §102 Rejection

Claims 17 and 37 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,090,055 issued to Frajdenrajch (“FRAJDENRAJCH”). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP

§2131. Applicants submit that the applied art does not show each and every feature of the claimed invention.

Although Applicants do not agree that the applied art anticipates the claimed invention, by this amendment, claim 17 is amended to recite, *inter alia*, the suction chamber includes at least one air conduit and a removable air conduit stopper, wherein the air conduit provides an external air to said suction chamber so as to provide an air and pressurized fluid mixture. This feature was previously recited in claim 34, which the Examiner indicated as allowable. Therefore, Applicants submit this feature is not disclosed by FRAJDENRAJCH.

Moreover, claim 37 has been amended to recite, *inter alia*, a pressurized fluid intake hose is connected to an inlet of the upper body and includes an active salt dispenser. This is a variation of a feature previously recited in claim 30, which the Examiner indicated as allowable. Therefore, Applicants submit this feature is not disclosed by FRAJDENRAJCH.

In view of the above, Applicants submit that FRAJDENRAJCH fails to disclose each and every feature of claims 17 and 37, and does not anticipate the claimed invention. Accordingly, Applicants respectfully request that the §102 rejection of claims 17 and 37 be withdrawn.

35 U.S.C. §103 Rejection

Claims 18-29, 31-32, and 36 are rejected under 35 U.S.C. §103(a) for being unpatentable over U.S. Patent No. 6,213,964 issued to Pesovic et al. ("PESOVIC") in view of FRAJDENRAJCH. This rejection is respectfully traversed.

Although Applicants do not agree that any proper combination of the applied art renders the claimed invention obvious, by this amendment independent claim 18 has been amended to incorporate the subject matter of allowable claim 30. Therefore, the rejection of claim 18, and claims 19-29, 31-32, and 36 that depend from claim 18, is moot. Applicants expressly reserve

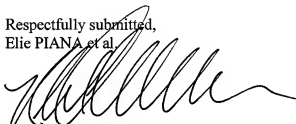
the right to re-file the subject matter of one or more of these claims in one or more continuing applications.

Accordingly, Applicants respectfully request that the §103 rejection of claims 18-29, 31-32, and 36 be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 19-0089.

Respectfully submitted,
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